

Federal Court



Cour fédérale

Date: 20240828

Docket: IMM-13305-22

Citation: 2024 FC 1338

Toronto, Ontario, August 28, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

**MARYAM ALIASGARI,
MOHAMMED AMIN GHASSEM,
ALIREZA GHASSEM AND
HAMID GHASSEM**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision made by the Refugee Appeal Division [RAD] upholding the Refugee Protection Division's [RPD] decision and dismissing the Applicants' refugee claim [Decision]. The RAD agreed with the RPD's negative credibility findings regarding the Applicants' refugee claim. For the reasons below, this application is granted.

[2] The Applicants are a married couple and their two sons, and are Iranian citizens. They seek refugee status in Canada on the basis of persecution due to their conversion from Islam to Christianity.

[3] The Applicants made a first refugee claim in 2017, on the basis of persecution at the hands of an alleged Sepah (Islamic Revolutionary Guard Corps) member. This claim was refused by the RPD on credibility grounds, then appealed to the RAD, who returned it to the RPD for redetermination.

[4] The primary focus of the second RPD hearing was the fear of return to Iran due to their conversion from Islam to Christianity.

[5] Their refugee claim was ultimately denied anew by the RPD due to credibility concerns. The Applicants appealed this decision to the RAD and included five new pieces of evidence: 1) a letter from their Iranian church in Vancouver; 2) a certificate of baptism certificate for one of the sons; 3) a certificate of baptism certificate for the other son; 4) photographs dated July 24, 2020 of the claimants' (parents') baptisms; and 5) photographs dated July 22, 2022 of their sons' baptisms. The RAD rejected items 1-3 and 5 because it found these documents and photographs did not raise a new issue. Rather, the RAD felt that the four items addressed the issues previously established before the RPD. As for the other (fourth item), the RAD found that the 2020 baptism photographs pre-dated the rejection of the claim, and therefore could not be admitted pursuant to the law regarding new evidence before the RAD.

[6] The RAD ultimately upheld the RPD's decision, and dismissed the Applicants' refugee appeal on the basis of the RPD's credibility concerns.

[7] The Applicants argue that the Decision was unreasonable for three primary reasons – because it (i) applied the wrong legal test in assessing the admissibility of the new evidence, and (ii) upheld the RPD's adverse credibility findings without conducting its own assessment. They also (iii) assert that their right to procedural fairness was breached because their former counsel failed to provide them with competent representation, in failing to raise a “new” issue, namely their active participation in the Mahsa Amini demonstrations and social media postings, in the aftermath of her death in the months leading up to the RAD decision (i.e. September – November 2022).

[8] The Respondent argues, on the other hand, that the Decision was both reasonable and fair given the reasons provided by the RAD decision maker [Member]. The Response provided explanations as to why the Member felt that none of the three arguments raised by the Applicants represented reviewable errors.

[9] I disagree with Respondent regarding the central claim that was before the RAD, regarding its credibility findings with respect to the Applicants' conversion to Christianity. Rather, I agree with the Applicants that the RAD erred in its blanket endorsement of the RPD's credibility findings. While the Applicants have raised strong arguments in each of their three arguments to this Court, the RAD's credibility findings are the most central to the claim itself – namely converted Christians and risk resulting therefrom in their native country. Given the

submissions of counsel at the appeal, the panel did not reasonably make findings on this core issue, but instead simply adopted *holus bolus* all of the RPD's findings.

[10] The RAD's role on appeal is to conduct its own assessment of the file (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103). While the RAD can ultimately agree with the RPD's findings and show deference, particularly where there are findings of facts, it must provide its own reasons and demonstrate how they have reached their conclusions (*Dowansingh v Canada (Citizenship and Immigration)*, 2015 FC 933 at para 11; *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 43).

[11] The mere fact that the RAD states that it will engage in an independent analysis, or otherwise pay lip service to the concept, does not make it so (see, for instance, *Jeyaseelan v Canada (Citizenship and Immigration)*, 2017 FC 278 at para 17). To simply adopt all of the RPD's reasons risks falling into the deferential standard of review that was found to be inappropriate for the RAD, save for instances of specific, meaningful advantage that the RPD had in making its credibility findings (see *Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 CF 1145 at paras 105-107, 131-133; see also, for instance, *Hamid v Canada (Citizenship and Immigration)*, 2018 FC 1246 at paras 8-9).

[12] Here, the RAD mentioned no specific or meaningful advantage that the RPD would have had. Indeed, the RAD dealt with the RPD's credibility findings, which are determinative in this case, primarily in a way that refers to and endorses in whole the RPD's reasoning without any

further explanation, analysis or justification for descriptors such as “vague and evasive” testimony:

I have conducted an independent review of the transcript, as well as the Record in this matter. I agree with each of the RPD credibility findings, for the same reasons provided by the RPD. These numerous credibility findings relate to material elements of the Appellants’ claims and are consistent with the evidence. The Appellants argue that the RPD was responsible for their vague and evasive testimony, noting that the Member should be held accountable for rephrasing and asking clarifying questions; as well as erring by failing to “navigate the conversation between the Appellants and the interpreter in a manner that would allow for more specific responses”.¹⁶ Having reviewed the transcript, I disagree. The RPD questioned the Appellants appropriately, put inconsistencies and omissions to them for clarification of their evidence and asked a number of clarifying questions throughout the hearing. The RPD’s reasons are detailed and complete, they accurately reflect the testimony on the Record, and they are clear. I find that the reasons, and the credibility findings therein, are correct. (RAD Reasons at para 18; FN 16 cites to the Appellants’ Record, Memorandum of Argument, p. 13).

[13] The RAD Member simply stating that she has conducted an independent review of the transcript and the record, without more, is insufficient. This is an example of what I refer to above as lip service to the standard of review, as well as to the duty to conduct an independent review. Stating that “I agree with each of the RPD credibility findings, for the same reasons provided by the RPD” emphasizes the failure to do what the panel has just stated that it must do. Action – in the form of analysis – and not just words, are required. The conclusion that the RPD’s reasons are “detailed and complete” and its credibility findings are “correct,” are indeed merely conclusory.

[14] The wholesale support for all RPD findings are all the more troubling when the RAD Member refers to the Appellants’ memorandum in her footnote above, and yet in in that

Appellants' memorandum, the family's then-counsel had taken the time to provide numerous instances of what he felt were unsubstantiated and improper negative credibility findings regarding the family's avowed conversion to Christianity. At least some of those findings, I agree, were indeed troubling, including the very labels of "evasive and vague" testimony that the RAD repeated, and the RPD's finding that Ms. Aliasgari "did not appear genuine and appeared, at times, to be embellishing her claim" (RPD Decision at para 24).

[15] In addition, the RPD described as vague Ms. Aliasgari's testimony on her Christian faith (RPD Decision at para 28). Yet, she spontaneously quoted her preferred passages in scripture, and identified the place in the Bible in which those passages were found. The same can be said for her husband, who the RPD found had "minimal knowledge of Christianity" (at para 32). Yet when asked about what it meant to him to be a Christian, he stated:

Resurrection, repentance, being forgiven or being cleaned from any impurities and sins, and of the pain and all this sadness and mourning of the past years, and happiness, peace. And the inner peace and calmness that we have, and we feel right now, we believe it only comes from believing in God, Jesus Christ. All other religions, the prophets and disciples, they have come and gone, were born and passed away. They committed sins and they don't exist now. But Jesus Christ...was crucified for our sins and he gave up his life and his blood for our forgiveness, for our purity, and by believing in him, we will have eternal life. And I'm proud to be Christian.

[16] And there are yet further examples of similar RPD findings concerning their sons and their testimony on their faith.

[17] In addition, both principal Applicants (Ms. Aliasgari and Mr. Ghassem) spoke about the dangers of converting from Islam to Christianity in Iran. For instance, Mr. Aliasgari testified to

the RPD that “my main reason that my fear of going back to Iran is that I converted into Christianity. I’m a Christian. And according to Islam, religion of Islam and the way that the laws are in Iran, a person who was born into Islam and considered a Muslim, if converting to another religion is considered as a murtad and the punishment for that is execution” (CTR at p 693).

[18] Ms. Aliasgari’s earlier testimony on the dangers of converting from Christianity to Islam, punishable by death, was provided in the transcript of the RPD hearing: “As a Christian if I go back to Iran, because according to Islam law, for a person who converted, for a Muslim who converts the punishment is execution”: CTR at p 702; see also her testimony on the subject at pages at 672 and 697 of the CTR).

[19] In another passage, when asked by the RPD Panel about what Mr. Ghassem meant by “saving others”, he stated:

Because since my childhood my whole family, we were going to the wrong path. We had the wrong address, like we believed in God but the path was wrong, the address was wrong. And I wanted to help others. Now that I realize that the address was wrong and I know that many 20 people in Iran who are Muslims, they are in the same situation, and maybe they just don’t want to know or they don’t know about other religions, and if it’s possible that by just explaining to them and giving them the right address, they could be saved, same as it happened to me. I would really love to do that if I get the opportunity. For other Iranian people who come here I would like to give them the opportunity and talk to them, give them the right address to find the true path and finding the true God.

[20] Why the RAD Member entirely agrees with the RPD assessment that these explanations are “evasive” and “vague” goes unexplained.

[21] Whether a decision is reasonable is outlined in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]: reasons must be transparent, intelligible and justifiable, and provide responsive justification to the case that was put before the adjudicator.

[22] In light of my findings regarding credibility and the lack of any independent assessment by the RAD, the Decision is unreasonable for its lack of justification and transparency (*Vavilov* at para 95). The judicial review is granted on that second issue alone. There is no need for me to examine the first and third grounds raised by the Applicants – that of the failure of the RAD to admit the new evidence they sought to have introduced, and the alleged incompetence of former counsel.

JUDGMENT in file IMM-13305-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.
2. The matter shall be sent back to the RAD for redetermination by a different member.
3. There is no question to certify.
4. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13305-22

STYLE OF CAUSE: MARYAM ALIASGARI, MOHAMMED AMIN
GHASSEM, ALIREZA GHASSEM and HAMID
GHASSEM v MCI

**JUDICIAL REVIEW CONDUCTED BASED ON THE WRITTEN RECORD, WITHOUT
THE PERSONAL APPEARANCE OF THE PARTIES**

JUDGMENT AND REASONS: DINER J.

DATED: AUGUST 28, 2024

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